

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of TYLER NATHANEAL TULLOS,  
Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHAWNA SWEITZER,

Respondent-Appellant,

and

LESLIE JOSEPH TULLOS,

Respondent.

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UNPUBLISHED  
September 15, 2005

No. 260715  
St. Joseph Circuit Court  
Family Division  
LC No. 03-000340-NA

Before: Smolenski, P.J., and Murphy and Davis, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to her minor child, Tyler Tullus, under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err in determining that the statutory grounds for termination of parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence established that respondent-appellant failed to provide Tyler with proper care or custody during the sixteen months that she parented him. During this period respondent-appellant permitted a known sex offender to have contact with Tyler and exposed him to illegal drug use. In addition, Tyler suffered from the unstable environment provided by respondent-appellant and did not develop an attachment to her. During the twenty-month course of the lower court proceedings, respondent-appellant was not able to house or transport herself, but relied on others for provision of those basic physical needs. Respondent-appellant failed to attend substance abuse counseling or consistently submit drug screens until six weeks before the termination hearing. The evidence also showed that respondent-appellant lacked maturity and engaged in risky behaviors. Further, her psychological evaluation and her refusal to submit to drug screens and participate in substance abuse treatment

or counseling indicated a lack of commitment to the needs of her children. In light of respondent-appellant's lack of compliance and her demonstrated lack of responsibility and commitment to reunification, the trial court properly concluded that there was no reasonable expectation that respondent-appellant would become able to provide Tyler with proper care or custody within a reasonable time. In addition, Tyler suffered past trauma in respondent-appellant's care and experienced renewed trauma each time he visited her, as evidenced by regression in his language skills and behavior. Hence, the trial court did not clearly err when it found that the statutory grounds for the termination of respondent-appellant's rights under MCL 712A.19b(3)(c)(i), (g) and (j) existed.

Respondent-appellant also argues the trial court applied an erroneous standard of proof when determining whether termination was clearly not in the best interests of Tyler. Specifically, respondent-appellant contends the trial court erroneously shifted the burden to her to demonstrate that termination was clearly not in his best interests. This, she contends, warrants reversal and a new termination hearing. While we agree that the trial court misstated the applicable standard, the trial court's opinion clearly indicates it determined that termination of respondent-appellant's parental rights to Tyler was in his best interests. Therefore, we do not believe a new termination hearing is warranted.

Under Michigan law, once the trial court has determined that a statutory basis for terminating parental rights exists, the court must terminate the parental rights unless the court finds that termination of parental rights to the child is clearly not in the child's best interests. MCL 712A.19b(5). In its opinion, the trial court stated that the parent whose rights were being terminated had the burden of proving that termination would clearly not be in the child's best interest. However, our Supreme Court rejected the notion that either party bears the burden to prove the child's best interests once a statutory ground has been established. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). Rather, the trial court is expected to base its best interests decision on the entire record, so that even if a respondent provides no evidence, the trial court may still find termination is contrary to a child's best interests. *Id.* at 353. Despite its mischaracterization of the applicable burden, the record reveals that the trial court actually examined the evidence and determined that it supported a finding that it was in Tyler's best interest to terminate respondent-appellant's parental rights. Because the trial court properly based its best interests finding on the entire record and the record supports the finding, we conclude that the trial court's misstatement of the applicable standard was harmless error.

Respondent-appellant next argues that the trial court erred in refusing to recuse itself on her motion. We disagree.

When reviewing a motion to disqualify a judge, this Court reviews the trial court's findings for an abuse of discretion, but reviews de novo the applicability of the facts to the relevant law. *Gates v Gates*, 256 Mich App 420, 439; 664 NW2d 231 (2003). A judge will not be disqualified based on a claim of bias or prejudice absent actual personal bias or prejudice against a party or the party's attorney. *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). "Furthermore, the party who challenges a judge on the basis of bias or prejudice must overcome a heavy presumption of judicial impartiality." *Id.*

Respondent-appellant moved the trial court to recuse itself because it allegedly made findings of fact not based on evidence. Specifically, respondent-appellant found fault with the

trial court's statement that respondent-appellant's no-shows for drug testing were proof that she was still using drugs. Even if we were to determine that this finding was erroneous, an erroneous ruling is not grounds for disqualification of a judge. *Ireland v Smith*, 214 Mich App 235, 249; 542 NW2d 344 (1995). Instead, there must be actual personal bias or prejudice against the party or the party's attorney. *Cain, supra* at 497. Because the record reveals no evidence that the finding was motivated by personal bias or prejudice against respondent-appellant or respondent-appellant's attorney, we cannot conclude that the trial court abused its discretion when it denied respondent-appellant's motion.

Finally, respondent-appellant argues that the trial court erred by improperly comparing the home of Tyler's father and his companion, Tiffany Castle, with respondent-appellant's home before determining whether the statutory grounds for termination were established. We disagree.

A trial court should not weigh the advantages of alternative homes against the type of home that the respondent could provide when determining whether a statutory basis for terminating parental rights exists. *In re Atkins*, 112 Mich App 528, 541; 316 NW2d 477 (1982). However, the record reveals that the trial court properly based its decision to terminate respondent-appellant's parental rights solely on her fitness as a parent under the standards specified by MCL 712A.19b(3). While the trial court did compare the home environment provided by Tyler's father and Castle to that of respondent-appellant, it did so only after first finding that a statutory ground for terminating respondent-appellant's parental rights existed and while considering the best interests of Tyler. Therefore, there was no error warranting reversal. *Atkins, supra* at 541-542.

Affirmed.

/s/ Michael R. Smolenski  
/s/ William B. Murphy  
/s/ Alton T. Davis